

REMARKS

These remarks are responsive to the Non-final Office Action mailed September 3, 2009 (“Action”). Reconsideration and allowance of the instant application are respectfully requested.

Telephonic Interview

Preliminarily, Applicants wish to thank Examiner Graham for the courtesies extended to their representatives during the telephonic interview on November 17, 2009. The following remarks include Applicants’ substance of interview pursuant to MPEP § 713.04.

During the interview, no exhibits or demonstrations were presented. Applicants discussed the application as filed, previous claims 1 and 6, the Office Action mailed September 3, 2009, and the references Rosen et al. (US 2003/0050879) and Martin (US 7,089,206) cited in the rejection. Applicants argued that Rosen and Martin at least do not teach or suggest the claim 6 features of a match engine simultaneously considering two or more contracts to determine matches. Examiner Graham suggested that amending dependent claim 6 into independent claim 1 might overcome the rejection, but further consideration would be required as to the allowability of the claim.

Claim Rejections Under 35 U.S.C. § 101

Claim 13 stands rejected under 35 U.S.C. § 101 because the claimed invention is directed to nonstatutory subject matter. Claim 13 has been amended to recite a processor, and hence is at least tied to another statutory category. Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 101.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rosen et al. (US 2003/0050879)¹ in view of Martin (US 7,089,206). Applicants respectfully traverse for at least the following reasons.

Claims 5 and 6 have been incorporated into claim 1, which now recites a method including the features of “wherein the particular class of futures contracts comprise a contract

¹ Applicants note that the Office Action incorrectly refers to Rosen as being U.S. Patent No. 6,049,784, which is a patent to Weatherly. See Action, p. 2. The Rosen publication was first referred to in the Office Action mailed June 5, 2007.

cluster having a unique contract identification representative of a single tradable instrument, and wherein responsive to contract clusters being identified, requiring the match engine to consider two or more contracts simultaneously to determine matches.”

To reject previous claim 6, the Action asserts that:

As per claim 6, Rosen discloses wherein the particular class of futures contracts comprise a contract cluster, having a unique contract ID representative of a single tradable instrument, and wherein responsive to contract clusters being identified, requiring the match engine to consider

two or more contracts simultaneously to determine matches . (see column 8 para 0065-0067 and para 0068-0074 and column 9-13 para 0089-0149).

See Action, p. 4-5.

The cited paragraphs of Rosen, however, do not disclose that a “particular class of futures contracts comprise a contract cluster having a unique contract identification representative of a single tradable instrument” nor do they disclose “wherein responsive to contract clusters being identified, requiring the match engine to consider two or more contracts simultaneously to determine matches.” Rosen merely describes a “method and system . . . for comparing data from several different sources in real time to determine inconsistencies between such data.” *See* Rosen, Abstract. Rosen discloses using “such a method and system for identifying exceptions in data from financial markets, brokers and customers to alert a financial institution immediately to inconsistent data with respect to orders, executions and allocations of trade information.” *Id.*

The systems and methods of Rosen do not, however, disclose the features of a contract cluster or simultaneous matching, as claimed. For instance, in paragraph 129, Rosen describes a cluster, but does not teach or suggest that a “particular class of futures contracts comprise a contract cluster having a unique contract identification representative of a single tradable instrument,” as claimed. Instead, Rosen merely explains that when

“a number of exceptions occur within one parameter, or when a security that would cause a ‘cluster’ relationship occurs, it is termed a ‘cluster effect.’ The triggering of a cluster occurs because the accumulation of similar problems, although each one is individually small, adds up in aggregate to exceed the allowable threshold. This could be a user defined threshold trump possibly based on a dollar value or number of tickets. The triggering of a trump could be automatic because the aggregation is, by definition, a problem or a warning to a supervisor to look at and assign, if necessary, an override rating.”

Id. at ¶0129. Thus, a cluster in Rosen signifies that there is an accumulation of similar problems, but does not disclose that a “particular class of futures contracts comprise a contract cluster having a unique contract identification representative of a single tradable instrument.”

Also, Rosen describes “simultaneously receiving trade comparisons,” but does not disclose “wherein responsive to contract clusters being identified, requiring the match engine to consider two or more contracts simultaneously to determine matches,” as claimed. In paragraph 74, Rosen indicates that:

“The present invention constantly receives execution information from the broker in real time while simultaneously receiving trade comparisons from OCS and ACT. If the trade comparison results in a confirmed match, the system processes the trade as compared. If there is an ‘out’ (i.e., an unmatched execution) the system evaluates the nature of the out. By evaluating the nature of the out, the present invention can then decide, based upon work experience and quantitative measures, the odds of getting the out resolved within a specified time frame. Based upon these calculations, the system can then parse the work out to the proper personnel in the optimal configuration.”

Id. at ¶ 0074. While Rosen does use the word simultaneously, Rosen does not mention anything about identification of contract clusters requiring a match engine to consider two or more contracts simultaneously to determine matches.

Martin does not remedy these deficiencies. The Action merely relied on Martin for purportedly disclosing a “risk allocation value (RAV) component” in claim 1, and not to disclose the features of previous claim 6, now included in amended claim 1. Thus, Martin also fails to disclose or suggest at least the claimed contract cluster and simultaneous matching.

As such, the combination of Rosen and Martin, even if proper, fails to teach or suggest all of the features recited in amended claim 1, and hence claim 1 is in condition for allowance. Applicants respectfully request that the rejection under 35 U.S.C. § 103 be withdrawn.

Independent claims 13 and 19 are allowable at least for reasons analogous to those given in support of amended claim 1.

The pending dependent claims are allowable at least for reasons analogous to those given in support of independent claims 1, 13, and 19, in addition to the features they recite.

CONCLUSION

Applicants respectfully submit that the pending claims are in condition for allowance. Favorable reconsideration of this application is respectfully requested. The Examiner is invited to contact the undersigned should it be deemed necessary to facilitate prosecution of the application.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Date: December 3, 2009

By:./Christopher M. Swickhamer
Christopher M. Swickhamer
Registration No. 59,853
BANNER & WITCOFF, LTD.
10 South Wacker Drive,
Suite 3000
Chicago, IL 60606
Telephone: 312-463-5000
Facsimile: 312-463-5001